



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 16, 2004

Mr. Darrel G-M Noga  
Roberts & Smaby, P.C.  
1717 Main Street #3000  
Dallas, Texas 75201

OR2004-10684

Dear Mr. Noga:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 215610.

The City of Coppell (the "city"), which you represent, received two requests for the complete report of a certain incident that occurred on June 14, 2004. You state that the city will release to the requestors portions of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrines of common-law and constitutional privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976),

---

<sup>1</sup>You state that the submitted crime scene photographs are representative samples of numerous crime scene photographs. We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

*cert. denied*, 430 U.S. 931 (1977). Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). However, because "the right of privacy is purely personal," that right "terminates upon the death of the person whose privacy is invaded." *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.-Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) ("action for invasion of privacy can be maintained only by a living individual whose privacy is invaded") (quoting Restatement of Torts 2d); *See Attorney General Opinions JM-229* (1984) ("the right of privacy lapses upon death"), H-917 (1976) ("We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death."); Open Records Decision No. 272 (1981) ("the right of privacy is personal and lapses upon death"). Thus, the deceased individuals whose information is at issue do not have a privacy right in the information. Furthermore, we find that the city has not shown that the release of the information would implicate the privacy rights of any living individual. Consequently, the city may not withhold any information based on section 552.101 in conjunction with the common-law or constitutional right to privacy.

You assert that the submitted information contains information that is subject to Chapter 611 of the Health and Safety Code. Section 611.002(a) of the Health and Safety Code reads as follows:

Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Health & Safety Code § 611.002(a). Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See Open Records Decision No. 565* (1990). We have marked the information that contains communications between a patient and a professional and that may only be released in accordance with the access provisions of sections 611.004 and 611.0045 of the Health and Safety Code.

You raise section 773.091 of the Health and Safety Code, which provides in pertinent part as follows:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is

confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

(c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

Health & Safety Code § 773.091. This privilege of confidentiality "does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services." *Id.* § 773.091(g). After reviewing the documents at issue, we find that they are not records of the identity, evaluation, or treatment of a patient created by the emergency medical services personnel or physician or maintained by an emergency medical services provider. Furthermore, the submitted information does not include a communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient. Consequently, the submitted documents do not fall within the ambit of section 773.091 and may not be withheld under section 552.101 of the Government Code in conjunction with that provision.

You raise section 58.007(c) of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Family Code § 58.007(c). The Juvenile Justice Code, of which section 58.007 is a part, covers the proceedings in all cases involving delinquent conduct or conduct indicating a need for supervision, as those terms are defined in the Code. *See id.* § 51.03(a)-(b), Open Records Decision No. 680 (1983). Thus, section 58.007 of the Family Code concerns the physical records of a child who is involved in the juvenile justice system. *See* Open Records Decision No. 680 (1983). The information at issue does not involve delinquent conduct or conduct indicating a need for supervision and so, is not a record of a child who is involved in the juvenile justice system. Thus, section 58.007(c) does not apply in this case.

You also assert that social security numbers and motor vehicle record information are confidential. However, the laws making social security and motor vehicle record information confidential are designed to protect an individual's privacy interests, and, as noted above, the common law right to privacy expires on death. *See* Moore, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229 (1984); H-917 at 3-4 (1976); ORD 272 at 1. Accordingly, the deceased individuals' social security and motor vehicle information may not be withheld under section 552.101. However, the living individuals' social security numbers may be confidential and driver's license information is confidential, as we will explain.

Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver's license number belonging to a living individual under section 552.130.

You raise section 552.117, which excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the city must withhold the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members. However, you have not marked any information as covered by section 552.117, nor can we discern that the information includes any personal information of a current or former official or employee of the city.

However, we have marked information a representative of Plano Independent School District (the "school district") transferred to the city. This office has applied the interagency transfer doctrine to conclude that information made confidential under section 552.117(a)(1) of the Government Code remains confidential upon transfer to another governmental body. *See* Open Records Decision No. No. 674 at 4-5 (2001). Section 552.117(a)(1) protects this information from public disclosure to the extent that the individual requested that the information be kept confidential. *See id.* § 552.024 (providing procedure for employee or official to choose whether to allow public access to section 552.117(a)(1) information). The transfer of confidential section 552.117 information did not destroy the confidentiality of that information. *See* Open Records Decision No. 674 at 4-5 (2001); *see also* Open Records Decision No. 516 (1989) (Department of Public Safety did not violate confidentiality under predecessor of section 552.117(2) by transferring police officer's home address to Attorney General's Child Support Enforcement Office). If the school district employee filed an election with the school district under section 552.024 to keep confidential her home address and home telephone number, this information in the custody of the school district was confidential under section 552.117(a)(1). Pursuant to the intergovernmental transfer doctrine, the information remains confidential upon the record's transfer to the city. Thus, in order to ascertain whether the information is confidential and cannot lawfully be released to the public, the city must inquire with the school district as to whether the individuals

elected under section 552.024 to keep confidential their home address and home telephone number. If so, the individuals' home address and home telephone number contained in the submitted information are excepted from disclosure under section 552.117(a)(1).<sup>2</sup>

Finally, you "bring to our attention" the fact that included within the submitted information are "reference to internal information transmitted between law enforcement agencies and/or other state agencies, also required to be statutorily withheld." On several pages of the submitted information, you highlight information in this regard, including the medical examiner's cause of death report, the phone number of the New York Police Department, and the content of various communications with the Southwestern Institute of Forensic Sciences. You do not explain what statute makes this information confidential although you cite to two open records decisions of this office, Open Records Decision Nos. 655 (1997) and 565 (1990). Both of these decisions discuss chapter 411 of the Government Code, which specifically addresses the confidentiality of criminal history record information ("CHRI"), and Open Records Decision No. 655 addresses the interagency transfer of CHRI in two specific circumstances. *See* Open Records Decision Nos. 655 (1997), 565 (1990). Section 411.082(2) of the Government Code defines CHRI as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal charges and their dispositions. The term does not include: (A) identification information, including fingerprint records, to the extent that the identification does not indicate involvement of the person in the criminal justice system; or (B) driving record information." Gov't Code § 411.082(2). CHRI is generally made confidential, but it may be released in limited circumstances. *See* Open Records Decision No. 655 (1997).

The information submitted does not include CHRI and thus is not made confidential under chapter 411 of the Government Code. Furthermore, you have not explained how the information is otherwise made confidential. Accordingly, we find that the city must release the remaining information.

In summary, the city may only release the marked confidential communications between a patient and a professional in accordance with the access provisions of sections 611.004 and 611.0045 of the Health and Safety Code. The city must withhold the driver's license number of a living individual based on section 552.130 of the Government Code and must withhold the social security number of living individuals if the city obtained or maintains the numbers pursuant to any provision of law enacted on or after October 1, 1990. If the city learns that the school district employees elected to keep their home address and telephone number confidential, the city must withhold that information based on section 552.117(a)(1)

---

<sup>2</sup>The school district also released the first requestor's home address and telephone number to the city. However, the first requestor has a right to her own personal information and so the first requestor's information cannot be withheld from her based on section 552.117. *See* Gov't Code § 552.023.

except the city must release the first requestor's own information to her. The city must release the remaining information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

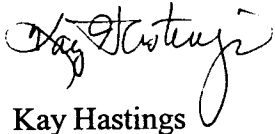
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge

this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kay Hastings". The signature is fluid and cursive, with the first name "Kay" being more prominent.

Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/seg

Ref: ID# 215610

Enc: Submitted documents

c: Ms. Kristi Esposito  
3050 Regent Boulevard, Suite 400  
Irving, Texas 75063  
(w/o enclosures)

Ms. Julie Harrision  
4577 Hinton Drive  
Plano, Texas 75024  
(w/o enclosures)